HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.772 of 2007

Between:

The A.P. State Wakf Board,
Rep. by its Chief Executive Officer,
Nampally, Hyderabad

… Appellant

And

Syed Amanulla Hussaini & others

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri S.M. Subhani

Counsel for respondent Nos.1 to 3 : Shri P. Veera Reddy for
Shri K. Raji Reddy

September 28, 2007

Per G.S. SINGHVI, CJ

This is an appeal for setting aside order dated 22.03.2007 passed by the learned Single Judge in Writ Petition No. 107 of 1998, whereby she quashed notification dated 30.03.1989 issued under Section 4(3) of the Wakf Act, 1954 (for short, 'the 1954 Act') through which the land comprised in Survey Nos. 1913, 1914, 1917 and 1278 of Nirmal Village and Mandal, Adilabad District measuring Ac.2.35 guntas, Ac.1.16 guntas and Ac.0.32 guntas respectively was notified as wakf property.

In the writ petition filed by them, the respondents questioned notification dated 30.03.1989 on several grounds set out in the affidavit

of respondent No.2 herein including the one that before declaring the subject land as wakf property, the concerned authority neither conducted any inquiry nor any opportunity of hearing was afforded to them as per the requirement of Sections 4 and 6 of the 1954 Act. Respondent No.2 averred that their father Syed Anwarullah Hussaini was Inamdar of the subject land, which was Maufi Inam and not Service Inam; that entries to that effect were made in the revenue records since 1931; that after the death of their father on 24.05.1984, they occupied the land; that for the purpose of removing the encroachment made by some land grabbers, they filed L.G.C.No.33 of 1996 under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982; that during the pendency of the land grabbing case, they came to know about notification dated 30.03.1989, and that even though the land does not belong to any mosque and is not meant for the benefit of mosque, the State Government notified the same as wakf property. In paragraphs 8 to 11 of his affidavit, respondent No.2 averred as under:

"8. On enquiry, the petitioners came to know that the lands are notified under the provisions of Wakf Act treating the same as wakf lands. The said notification is published in A.P. Gazette No.13-A dated 30.3.1989. The petitioners submit that the said lands are not belonging to any mosque and they are not for the benefit of mosque. The petitioners' father was rendering service to the mosque and the petitioners are also continuing the same. The said lands are nothing to do with the mosque or any other religious institution. The unilateral notification by the Govt. that the lands are wakf lands is without any basis and the same are arbitrary, illegal and without jurisdiction. I submit that the petitioners have no knowledge about the impugned notification and for the first time they came to know about the same, after filing of the Land Grabbing Case, in the year 1997. The petitioners, being the interested parties, a personal notice before the notification of the land as wakf land, is mandatory and no such notice was served upon the petitioners.

9. I submit that the petitioners, being interested parties and their names and their predecessors' names are recorded as inamdar, a notice

should have been issued before notifying the lands as wakf lands. No notice was ever issued either to the petitioners or their father in this regard. The action of the Govt. in notifying the lands is violative of principles of natural justice.

10. It is submitted that the impugned action of the respondents is liable to be declared as null and void for several reasons. It may be stated that the Wakf Act, 1995 has come into force with effect from 1-1-1996. Section 3 of the Act provides definition, while Sections 4 and 5 provide for survey of wakfs and publication of list of wakfs. Section 6 contemplates the decision of disputes regarding the wakfs by a Tribunal to be constituted under Section 83 of the Act. Section 7 provides for the power of Tribunal to determine disputes regarding wakfs. Section 40 also provides for a suo motu enquiry and also vests the power to decide any question as to whether a particular property is wakf property or not etc. It is submitted that Section 4 of the Act provides for conducting the survey by the Survey Commissioner to be appointed under the Act or by any Additional or Assistant Survey Commissioner shall make an inquiry and submit to the State Government on the aspects referred to therein with regard to wakf and the Survey Commissioner is also given the powers of a civil court while making the enquiry as per Section 4(4) of the Act. Section 4(5) provides that the dispute is to be decided on the basis of any deed of wakf. Section 4(6) states that the State Government may publish in the Gazette directing the Survey Commissioner to make a second enquiry and that can be done only after 20 years as per the proviso. Section 5 provides that on receipt of report under Sec.4(3) the State Government shall forward a copy of the same to the Board and the Board after examining the same forwarded for publication in the Gazette. Sections 36 to 38 of the Act provides for registration of the wakf property. Section 36 contemplates filing of an application for registration. Section 36(8) provides that every application for registration shall be made within three months from the commencement of the said Act, in case of wakfs created prior to the commencement. Section 112 provides that the Wakf Act 1954 and Wakf (Amendment) Act 1984 are repealed and that anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provision of the present Act. The petitioners respectfully submit that the impugned action may be examined in the light of the following points submitted by the petitioners with reference to the aforesaid provisions of the Act.

11. It is submitted that there is no enquiry by the Commissioner as

contemplated by Section 4 of the Act. Admittedly, the petitioners and their predecessors have been in possession and enjoyment of the property for more than 100 years and no enquiry was made and no notice was given to me. No opportunity also is given to the petitioners. Even if any enquiry that was conducted, it must have been a make believe one. It is submitted that the enquiry contemplated under Section 4(3) is in regard to properties and a decision in that behalf requires an opportunity to the affected party. The nature of the enquiry contemplated under Section 4(3) can be understood by reference to Section 4(4) which provides the Survey Commissioner with powers of the civil court with regard to the matters provided therein. Section 6(1) explanation also confers an opportunity to be given to the person interested and it should be reasonable. In the first place, the petitioners submit that there is no enquiry or much less any report to the State Government. Even if there is an enquiry and report, the same is in contravention of the provisions of the Act and also principles of natural justice. Hence, it is void. It is submitted that there is no report to the State Government much less any forwarding of such report by the State Government to the Wakf Board. Even if there is any such formalities were complied with, it must be presumed that it is only a farce and no real enquiry is conducted and no importance is attached to those functions. Hence, to this extent it is submitted that Section 4(4) is void if it provides only for one-sided ex parte enquiry and submits a report. It is submitted that inclusion of any property and registration thereof as wakf is an act affecting the rights of parties and no guidelines are prescribed for executing those acts. In the absence of providing sufficient safeguard, Section 4, 5 and 38 of the Act are wholly unconstitutional and they have to be struck down. It is further submitted that the function assigned to the State Government i.e. merely forwarding the report to the Wakf Board is an empty formality and no useful purpose is served and the rights of the affected parties are not protected. It is further submitted that Section 36 of the Act which provides for registration of wakfs contemplates an application and prescribes a time limit. In this case, no such application appears to have been filed by anybody interested on behalf of the wakfs."

In the counter filed by Sri Syed Burhanuddin Qadri, the then Chief Executive Officer of the Andhra Pradesh State Wakf Board (for short, 'the Board'), it was averred that the subject land is attached to

the mosque known as “Ek Khana Mosque” situated at Nirmal; that the writ petitioners knew about notification dated 30.03.1989, and that they do not have the locus to challenge the declaration of the subject land as wakf property. He also raised the objection of alternative remedy by asserting that the writ petitioners can file a suit in the Tribunal constituted under the Wakf Act, 1995 (for short, ‘the 1995 Act’).

The learned Single Judge noted that Sections 4, 5 and 6 of the 1954 Act are pari materia to similar provisions of the 1995 Act, relied on the judgment of this Court in **B. Gowra Reddy v. Govt. of A.P., Revenue Department, Hyderabad**[1] and held that failure of the Board to comply with the basics of natural justice was fatal to the declaration of the disputed land as wakf property.

We have heard Shri S.M. Subhani, learned counsel for the appellant, Shri P. Veera Reddy, learned counsel for respondent Nos.1 to 3 and are convinced that the reason recorded by the learned Single Judge for invalidation of notification dated 30.03.1989 does not suffer from any legal infirmity. Since it is not in dispute that the writ petitioners are in occupation of the land which was declared as wakf property and notification dated 30.3.1989 was not preceded by notice to any of the three respondents, it must be held that the learned Single Judge did not commit any error by quashing the same on the ground of violation of the rules of natural justice.

In view of the above conclusion, we do not consider it necessary to deal with the other points raised in the writ petition of the respondents.

For the reason stated above, the appeal is dismissed. However, it is made clear that the order passed by the learned Single Judge and this judgment shall not preclude the appellant from initiating

fresh action for declaring the disputed property as wakf under the provisions of the 1995 Act and issuing appropriate notification after giving notice and opportunity of hearing to respondent Nos.1 to 3.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

September 28, 2007

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[1] 2002 (3) ALT 439